

The Information Commissioner's response to HM Treasury's consultation on Transposition of the Fifth Money Laundering Directive.

The Information Commissioner has responsibility for promoting and enforcing the EU General Data Protection Regulation ('GDPR'), the Data Protection Act 2018 ('DPA'), the Freedom of Information Act 2000 ('FOIA'), the Environmental Information Regulations 2004 ('EIR') and the Privacy and Electronic Communications Regulations 2003 ('PECR'). She is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can, and taking appropriate action where the law is broken.

The Commissioner welcomes the opportunity to respond to the HM Treasury consultation on Transposition of the Fifth Money Laundering Directive (5MLD).

We have reviewed the consultation paper and identified that the current focus of many of the questions do not specifically require data protection input from this office at this time. However, there are aspects of the proposed changes under 5MLD that may have implications for the privacy of individuals.

Data protection is not, and should not be seen, as a barrier to an effective anti-money laundering and counter-terrorist financing regime. It is possible to introduce the changes required by 5MLD in a way that takes account of data protection legislation.

It is important that the implementation of 5MLD takes account of the data protection obligations of organisations and the data protection rights of individuals. A policy approach that considers data protection early in the design process, as required under GDPR, is likely to reduce the risk that concerns will be raised with the ICO in future regarding the lawfulness and fairness of the UK's anti-money laundering regime.

The ICO is currently engaging with HM Treasury on a wider piece of work in the Economic Crime Plan which includes the implementation of aspects of 5MLD.

The ICO therefore welcomes the opportunity to engage with HM Treasury and relevant stakeholders involved to discuss the data protection and privacy implications resulting from the proposed transposition of 5MLD. In particular, the ICO makes the following observations:

Trust Registration Service (TRS)

The ICO believes consideration should be given to the data protection implications around widening current trust registration services to include additional trust classifications. We note the acknowledgement that some personal data collected under 4MLD was onerous to customers and the government is to review and “ideally reduce information collected”. The ICO reiterates the necessity to consider data minimisation in the collection and processing of personal data and would support a review of what information is considered to be necessary and proportionate.

It is noted that obliged entities will be required to establish whether a trust is registered with the TRS prior to undertaking a business relationship. In these circumstances, the trust would be best placed to provide this confirmation, rather than the third party directly approaching the TRS for this evidence. This would ensure that only those requiring the information are provided with it and reduces the risk of third parties accessing the register where they should not be doing so.

The data included in the register would alone, or in combination with other available data, pose a risk of identity theft if made public and, as such, appropriate technical and organisational measures must be taken to ensure a level of security appropriate to that risk.

We also note that the consultation paper states that “the government may choose to collect some additional information with which to establish the legal identity of individuals; for example, National Insurance or passport numbers.” We would again reiterate the data minimisation requirements of the GDPR, and the increased risk that comes with the collection of more information. If the government intends to collect more personal data than that required by law, it must be able to clearly explain what the purpose of this is, and why the specific personal data being collected is necessary for that purpose.

The definition of legitimate interest for the purposes of accessing the TRS must be robust and must not facilitate the release of personal data to third parties where AML concerns cannot be demonstrated. Further, the

type of data released should be closely considered; it may be unnecessary for all data held on the TRS to be released to a third party under a legitimate interest request – guidance or rules may be required to provide clarity. It should also be made clear that the concept of “legitimate interest” in this context is separate from the concept of “legitimate interests” as a lawful basis for processing under Article 6(1)(f) of the GDPR¹.

National Register of Bank Account Ownership

It is noted that a national register of bank account ownership is required and personal data will be held on this register. Of concern to the ICO is the question raised in the consultation around whether specific types of unique identifier would be useful to law enforcement authorities. As with the use of such information in relation to the TRS, the use of passport number or national insurance numbers should only be sought where it can be demonstrated that this is necessary for the purposes for which the national register of bank account is intended. Additional personal data should not be sought simply because it may be useful to those who access the database for other purposes.

Further Considerations

In implementing 5MLD, there is a possibility of cross border data sharing to third countries outside of the EEA. Consideration of the data protection implications associated with these obligations is required.

GDPR Art 36.4 Consultation

The ICO welcomes the opportunity to formally consult with HM Treasury under Art 36.4 of the GDPR in respect of the data protection implications under the proposed transposition.²

¹ ICO Guidance on Legitimate Interests as a lawful basis for processing under the GDPR: <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/legitimate-interests/>

² DCMS Guidance on the application of Article 36(4) of the General Data Protection Regulation (GDPR): <https://www.gov.uk/government/publications/guidance-on-the-application-of-article-364-of-the-general-data-protection-regulation-gdpr/guidance-on-the-application-of-article-364-of-the-general-data-protection-regulation-gdpr>